

## FINAL STATEMENT OF REASONS

a) Updates to the Initial Statement of Reasons

Sections 45-101(m)(2), (m)(2)(A), (m)(2)(A)(1), (m)(2)(A)(2), (m)(2)(A)(3), and (m)(2)(B)

Specific Purpose:

These sections have been adopted to define a mutual agreement.

Factual Basis:

This definition is necessary for consistency with WIC section 11400(u). AB 12 (Chapter 559, Statutes of 2010) added a definition for the mutual agreement. That definition was subsequently amended and clarified in AB 212 (Chapter 459, Statutes of 2011, Section 29). As it reads in the statute, the definition is lengthy and can cause confusion for the reader. By adopting this regulation, the definition is broken into its key components, thereby, simplifying the definition for ease of use within the Extended Foster Care Program. This will ensure that both social workers and eligibility workers understand both the nature and the elements of a mutual agreement, which in turn ensures that youth meet all eligibility conditions.

**Modification:**

**Following the public hearing, and at its discretion, the California Department of Social Services (CDSS) has amended Section 45-101(m)(2)(A)(2) to add a comma between "payments" and "and" to make a grammatical correction.**

**Section 45-101(n)(1)**

**Modification:**

**An acronym for "Nonminor Dependent" was corrected and added for clarity purposes.**

Section 45-101(r)(1)

Specific Purpose:

This section is adopted to include a definition of re-entry.

Factual Basis:

This section is necessary to comply with WIC section 303(c) which provides that, "On and after January 1, 2012, a nonminor who has not yet attained 21 years of age and who exited foster care at or after the age of majority, may petition the court pursuant to subdivision (e) of Section 388 to resume dependency jurisdiction over himself or herself or to assume transition jurisdiction over himself or herself pursuant to Section 450." Thus, former foster youth can now re-enter Extended Foster Care and receive a payment. Accordingly, it is necessary to define re-entry within the foster care regulations.

Modification:

**Following the public hearing, and at its discretion, CDSS is amending the term "Re-entry into foster care." Specifically, "or" has replaced "and" between "388(e)" and "388."**

**This change is necessary for consistency with WIC sections 388(e) and 388.1. California law permits specific populations of nonminors to re-enter foster care. Youth who exited foster care after turning 18 years of age may reenter foster care pursuant to Welfare and Institutions Code Section 388(e). However, some youth who exited foster care prior to turning 18 years of age may reenter foster care after age 18 pursuant to Welfare and Institutions Code Section 388.1. Therefore, a youth may reenter foster care pursuant to either Section 388(e) or 388.1.**

Section 45-101(t)(3)

Specific Purpose:

This section is adopted to include a definition of Transitional Housing Program-Plus Foster Care (THP-Plus Foster Care).

Factual Basis:

This section is necessary for consistency with the WIC section 11403.2(a)(1), which permits nonminor dependent to live in a THP-Plus Foster Care placement that offers a supervised setting, as specified in a nonminor dependent's transitional independent living case plan, in which a youth is living independently. The WIC section 16522.1 delineates the requirements the facility must meet in order to be licensed. This section adds a definition of THP-Plus Foster Care. The THP-Plus Foster Care is a placement eligible for foster care funding, therefore, eligibility workers must be informed of the placement type. The inclusion of the definition in these regulations meets this purpose.

**Modification:**

After the 45-day public comment period and subject to its discretion, CDSS realized that a recent bill changed the definition of THP-Plus Foster Care. Due to that legislative action, CDSS is pulling this proposed definition and will incorporate the legislative changes into a later regulations package. CDSS is, therefore, reserving this section for future use.

**Section 45-202.521 was renumbered to Section 45-202.522**

**Modification:**

This section is being renumbered for consistency purposes, as a result of the addition of a new Section 45-202.521.

**Sections 45-310.1, .11, and .111**

**Specific Purpose:**

These sections are adopted to outline the age requirements of the Extended Foster Care program.

**Factual Basis:**

These sections are necessary to clarify the age requirements of the Extended Foster Care program. The WIC section 11403(a), as added by Section 47 of AB 12 (Chapter 559, Statutes 2010). As permitted by The Fostering Connections to Success and Increasing Adoptions Act of 2008 [Public Law (PL) 110-351], California expanded the upper age limit for foster care to 21 through the passage and implementation of AB 12. This section is necessary to ensure that nonminors who meet all other eligibility requirements remain eligible for foster care funding up to age 21.

**Modification:**

The Factual Basis was modified to correct a typo to say: These sections are necessary to clarify the age requirements of the Extended Foster Care program. WIC section 11403(a), as added by Section 47 of AB 12 (Chapter 559, Statutes 2010) and as permitted by The Fostering Connections to Success and Increasing Adoptions Act of 2008 [Public Law (PL) 110-351], expanded the upper age limit for foster care to 21. This section is necessary to ensure that nonminors who meet all other eligibility requirements remain eligible for foster care funding up to age 21.

## Section 45-310.17

### Specific Purpose:

This section is added to define the child support reporting requirements for nonminors and nonminor dependents.

### Factual Basis:

This section is necessary to comply with PL 110-351, which allowed states to expand the definition of child at 42 U.S.C. section 675 to include nonminors between the ages of 18 and 21. In order for a child age 18 or younger to be eligible for Foster Care, the county must make a child support referral. The WIC section 903(a) states, "The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court." Accordingly, this section is added to apply the child support requirements of Foster Care to the Extended Foster Care Program.

### Modification:

**Additionally, this section is necessary to comply with Family Code (FC) section 17552, which requires CDSS to promulgate regulations by which the county child welfare department shall determine whether it is in the best interests of a nonminor dependent to have the case referred to the local child support agency for child support services. FC section 17552(e) states that a nonminor dependent who is over the age of 19 is not a child for the purposes of referral to the local child support agency for collection or enforcement of child support. Therefore, this regulation is necessary to ensure that eligibility workers and social workers only apply the child support requirements in existing regulations if the nonminor dependent is under the age of 19.**

## Sections 45-310.181, .181(a) through (c)

### Specific Purpose:

These sections are adopted to specify that a nonminor participating in a secondary education program is eligible for Extended Foster Care benefits.

### Factual Basis:

These sections are necessary to comply with WIC section 11403(b)(1), which states that a nonminor who is participating in a secondary education program is eligible for Extended Foster Care benefits. Accordingly, these sections are added to specify this condition.

**Modification:**

**Additionally, this section is necessary to clarify for eligibility workers, social workers, nonminor dependents, and other interested stakeholders the types of educational programs that qualify as secondary education programs meeting the education and employment requirements for the continued eligibility of extended foster care benefits. These regulations are necessary for statewide administration of the extended foster care program to ensure that youth who are enrolled at least half time in programs described in the regulation are not improperly excluded from extended foster care. Finally, clarifying that enrollment is deemed continuous during summer or other scheduled breaks during the school program is necessary to ensure that youth who participate in secondary education do not experience a break or disruption in foster care payments during these periods.**

Sections 45-310.182, .182(a) through (c)

**Specific Purpose:**

These sections are adopted to delineate post-secondary or vocational education requirements for nonminors or nonminor dependents.

**Factual Basis:**

These sections are necessary to comply with WIC section 11403(b)(2), which states that a nonminor who is participating in a postsecondary or vocational education program is eligible for Extended Foster Care benefits. Accordingly, these sections are being added to specify this condition.

**Modification:**

**Additionally, this section is necessary to clarify for eligibility workers, social workers, nonminor dependents, and other interested stakeholders the conditions under which participation in post-secondary or vocational education meets the education and employment requirements for the continued eligibility of extended foster care benefits. These regulations are necessary for statewide administration of the extended foster care program to ensure that youth who are enrolled at least half time in programs described in the regulation are not improperly excluded from extended foster care. Finally, clarifying that enrollment is deemed continuous during summer or other scheduled breaks during the school program is necessary to ensure that youth who participate in post-secondary or vocational education do not experience a break or disruption in foster care payments during these periods.**

Section 45-310.183, .183(a) and .183(b)

Specific Purpose:

These sections are adopted to delineate the employment requirements for nonminors or nonminor dependents.

Factual Basis:

These sections are necessary to comply with WIC section 11403(b)(4) which states that a nonminor who is employed at least 80 hours a month is eligible for Extended Foster Care benefits. Accordingly, these sections are being added to specify this condition.

Modification:

**Additionally, this section is necessary to clarify for eligibility workers, social workers, nonminor dependents, and other interested stakeholders the conditions under which employment meets the education and employment requirements for the continued eligibility of extended foster care benefits. These regulations are necessary for statewide administration of the extended foster care program to ensure that youth who are employed full or part-time in work activities for at least 80 hours per month are not improperly excluded from extended foster care.**

Section 45-310.184, .184(a) through (d)

Specific Purpose:

These sections are adopted to delineate program requirements for nonminors and nonminor dependents who are participating in a program to remove barriers to employment or education.

Factual Basis:

These sections are necessary to comply with WIC section 11403(b)(3), which states that a nonminor who is participating in program or activity designed to promote or remove barriers to employment is eligible for Extended Foster Care benefits. Accordingly, these sections are being added to specify this condition.

Modification:

**Following the public hearing, and at its discretion, CDSS has amended Sections 45-310.184 and 45-310.184(a) to make a grammatical correction. Specifically, and for clarity, a comma is added between "to" and "employment" in each of these sections.**

**This section is necessary to clarify for eligibility workers, social workers, nonminor dependents, and other interested stakeholders the conditions under which participation in programs or activities to promote or remove barriers to employment meets the education and employment requirements for the continued eligibility of extended foster care benefits. These regulations are necessary for statewide administration of the extended foster care program to ensure that youth who are participating in a program or activity designed to promote, or remove barriers to, employment is not improperly excluded from extended foster care.**

Section 45-310.185(b)

Specific Purpose:

This section is adopted to delineate program requirements for nonminors and nonminor dependents that are unable to participate in any of the conditions of Sections 45-310.181 through 45-310.184.

Factual Basis:

This section is necessary to comply with WIC section 11403(b)(5), which states that a nonminor who is incapable of doing any of the activities in Sections 11403(b)(1) through (4) is eligible for Extended Foster Care benefits. Accordingly, these sections are being added to specify this condition.

Modification:

**This section is necessary to clarify for eligibility workers, social workers, nonminor dependents, and other interested stakeholders the conditions under which a nonminor dependent continues to be eligible of extended foster care benefits despite not being able to participate in secondary, in postsecondary, or vocational education, in employment activities for 80 hours per month, or in activities designed to promote, or remove barriers to, employment. These regulations are necessary for statewide administration of the extended foster care program and clarify that certain types of documentation may be accepted to verify the disability. These regulations are necessary to ensure that youth who cannot participate in any of those activities are not improperly excluded from extended foster care.**

Sections 45-310.19, .191 through .192

Specific Purpose:

These sections are adopted to specify that in order for a nonminor to remain in care past their 18<sup>th</sup> birthday they must either remain a dependent of the court or sign a mutual or voluntary re-entry agreement.

Factual Basis:

These sections are necessary to comply with WIC section 11403(b), which states, "A nonminor dependent receiving aid pursuant to this chapter...shall meet the legal authority for placement and care by being under a foster care placement order by the juvenile court, or the voluntary reentry agreement as set forth in subdivision (z) of Section 11400..." Accordingly, these sections are adopted to reflect that requirement.

Modification:

**Following the public hearing, and at its discretion, CDSS has amended Section 45-310.191 by adding "Unless the youth is incapable of making an informed agreement."**

**This change is necessary for consistency with Welfare and Institutions Code Section 303(d)(1), which clarifies that a youth who is incapable of making an informed agreement is not required to execute a mutual agreement.**

**In addition, the Specific Purpose has been updated to say: "These sections are adopted to specify that in order for a nonminor to remain in care past their 18th birthday they must either remain a dependent of the court and sign a mutual or sign a voluntary re-entry agreement" for clarify purposes."**

Sections 45-310.22, .221. .221(a) and (b)

Specific Purpose:

These sections are adopted to specify the beginning date of aid for a nonminor who has left Foster Care and wishes to return.

Factual Basis:

These sections are necessary to comply with WIC section 11403(e) which states that, "AFDC-FC Extended Foster Care benefits to nonminor dependents, may be resumed at the request of the nonminor by completing a voluntary re-entry agreement pursuant to subdivision (z) of 11400." However, WIC section 11402 (Section 45.1 of AB 12) provides that in order for a nonminor dependent to be eligible for Extended Foster Care, he or she must be living in an eligible placement. Thus, the earliest a payment may begin for a youth that is re-entering Extended Foster Care is the date of signing the voluntary reentry agreement or the court order granting the petition to reenter foster care or the date he/she is placed in an eligible facility, whichever comes last. This section is added to specify this requirement.



**Modification:**

Following the public hearing, and at its discretion, CDSS has corrected the quote from WIC Section 11403(e) that is referenced in the Factual Basis.

In addition, in the Factual Basis, the phrase "Extended Foster Care" is removed from the direct quote for consistency purposes. The quote shall say, "AFDC-FC benefits to nonminor dependents, may be resumed at the request of the nonminor by completing a voluntary re-entry agreement pursuant to subdivision (z) of 11400."

Sections 45-310.24, .241, .241(a) and (b)

**Specific Purpose:**

These sections are adopted to indicate when Extended Foster Care payments are terminated.

**Factual Basis:**

These sections are necessary to comply with WIC section 11403(e) which states, "Eligibility for aid under this section shall not terminate until the nonminor dependent attains the age criteria, as set forth in subdivision (a), but aid may be suspended when the nonminor dependent no longer resides in an eligible facility, as described in Section 11402, or is otherwise not eligible for AFDC-FC benefits under Section 11401, or terminated at the request of the nonminor, or after a court terminates dependency jurisdiction pursuant to Section 391, delinquency jurisdiction pursuant to Section 607.2, or transition jurisdiction pursuant to Section 452." Accordingly, these sections are added to specify this requirement.

**Modification:**

**Additionally, 45-310.241(b) is necessary to comply with federal law related to the maximum age at which a youth may be eligible for extended foster care. 42 U.S.C. 675(a)(8)(B)(iii) permits states to extend foster care to a youth "who has not attained 19, 20, or 21 years of age, as the State may elect." California has elected to extend foster care up to age 21. Therefore, in compliance with state and federal law, aid for a nonminor dependent must terminate the day before the nonminor dependent's 21<sup>st</sup> birthday.**

Sections 45-310.26 and .261

**Specific Purpose:**

These sections are added to delineate which county has payment responsibility for each nonminor or nonminor dependent in Extended Foster Care.

Factual Basis:

These sections are necessary to comply with WIC section 11403(f)(1), which provides that, "The county having jurisdiction of the nonminor dependent shall remain the county of payment under this section regardless of the youth's physical residence. Nonminor former dependents receiving aid pursuant to subdivision (e) of Section 11405 shall be paid by their county of residence." This section implements that requirement.

Modification:

**A period is added before "261" to correct a grammatical issue.**

Section 45-310.231(c)

Modification:

Specific Purpose:

**This section is adopted to indicate when Extended Foster Care payments are suspended.**

Factual Basis:

**This section is necessary to comply with WIC section 11403(b). Accordingly, participation in one of the five criteria delineated above is required for an Extended Foster Care payment. If the nonminor dependent ceases to participate, his/her eligibility for benefits also ceases. This section is added to specify when a payment should be terminated due to a lack of participation.**

Section 45-311.11, .111, and .112

Specific Purpose:

These sections are being added to inform the eligibility worker regarding requirements for eligibility determinations when nonminor dependents re-enter care.

Factual Basis:

These sections are necessary to comply with the Administration for Children Youth and Families-Children's Bureau, Program Information (ACYF-CB-PI) 10-11 which provided that, "For a youth age 18 or older who is entering or reentering foster care after attaining age 18.... AFDC eligibility is based on the youth without regard to the parents/legal guardians or others in the assistance unit..." and thus would require a new eligibility determination. County eligibility workers conduct eligibility determinations when a new application is received. This section instructs counties

that unlike a minor foster youth where the parents income would be counted in making a determination, the county only has to take into consideration the nonminor dependents income.

**Modification:**

**Following the public hearing, CDSS notes that this section was inappropriately classified as "Handbook" in the Initial Statement of Reasons. CDSS clarifies that the requirements of 45-311.11, .111, and .112 are regulatory.**

Sections 45-311.3 and .31

Specific Purpose:

These sections are adopted to indicate who is an eligible payee for a federal extended foster care payment.

Factual Basis:

These sections are necessary to comply with WIC section 11403(d), which provides that a nonminor dependent may receive their own payment if placed in a SILP. Minor foster children will not usually receive their own payment; the foster parent or facility will receive it. However, because nonminor dependents are now adults, they will be able to receive their own payments including this section in these regulations will inform and clarify for eligibility workers and ensure consistent funding in the AFDC-FC program.

**Modification:**

**Following the public hearing, and at its discretion, CDSS has amended Section 45-311.31 by adding "to" between "or" and "any." This amendment clarifies that federal financial participation may be available in payments made to the nonminor dependent or to any of the listed payees, as described in the regulation.**

Sections 45-312.3 and .31

These sections are adopted to indicate who is an eligible payee for a State extended foster care payment.

Factual Basis:

These sections are necessary to comply with WIC section 11403(d), which provides that a nonminor dependent may receive his/her own payment if placed in a SILP. Minor foster children will not usually receive their own payment; the foster parent or facility will receive it. However, because nonminor dependents are now adults, they will be able to receive their own payments. Including this section in these

regulations will inform and clarify for eligibility workers and ensure consistent funding in the AFDC-FC program.

**Modification:**

**Following the public hearing, and at its discretion, CDSS has amended Section 45-312.31 by adding "to" between "or" and "any." This amendment clarifies that funding may be available in payments made to the nonminor dependent or to any of the listed payees, as described in the regulation.**

**Handbook Section 45-312.41(a)**

**Modification:**

**Following the public hearing, and at its discretion, CDSS has added this section due to its inadvertent omission from the first version. The CDSS received written confirmation from Region IX of the Department of Health and Human Services that they would not permit claiming for probation nonminors who were not in a foster care placement on their 18<sup>th</sup> birthday.**

Sections 45-312.52, .521, .521(a) and (b), .521(b)(1) through (3), .522, .522(a), and .523

**Specific Purpose:**

These sections are moved from Sections 45-201.11 through .111(c)(1) and have been modified to clarify the continuing education requirements for nonminors living with legal guardians where the guardianship was created in probate court.

**Factual Basis:**

These sections are necessary to comply with, WIC section 11405(f), which states that nonminors living with legal guardians where the guardianship was created in probate court are subject to the continuing education requirements that were in place prior to the passage of AB 12. Accordingly, these sections have been moved and slightly modified from Section 45-201.11 et seq.

There are two types of legal guardianships that can receive a foster care payment up until the child's 18<sup>th</sup> birthday – probate and juvenile court guardianships. WIC 11405(e)(1) provided that only juvenile court ordered guardianship were eligible for extended foster care. Accordingly, these sections specify that probate guardianship continue under the old rules of AFDC-FC. County eligibility workers use the Department's regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

**Modification:**

**Following the public hearing, CDSS is making a change to this section for clarity purposes.**

**Language was inadvertently left out which clarifies how the nonminor can become his or her own payee. This section was modified to add that language.**

**Section 45-312.531(b)**

**Specific Purpose:**

This section is added to clarify that nonminors in juvenile court created guardianships must meet TILP Plan requirements.

**Factual Basis:**

These sections are necessary to comply with WIC section 11405(e)(1), which requires a nonminor in a juvenile court created guardianship to meet the requirements of WIC section 11403(b)(1) to (5). A TILP is necessary to document which of these requirements the nonminor will be participating in. Therefore, this section is adopted to specify this requirement.

There are two types of legal guardianships that can receive a foster care payment up until the child's 18<sup>th</sup> birthday – probate and juvenile court guardianships. WIC 11405(e)(1) provided that only juvenile court ordered guardianship were eligible for extended foster care. County eligibility workers use the Department's regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

**Modification:**

**Following the public hearing, it was noted that although this section of regulations was initially included in the regulations package, it was deleted prior to going to public hearing and is not needed.**

**~~Section 45-312.531(c)~~ Section 45-312.531(b)**

**Specific Purpose:**

This section is adopted to clarify that a nonminor in a juvenile court created guardianship must sign a mutual agreement or a voluntary re-entry agreement in order to meet authority for placement requirements.

#### Factual Basis:

This section is necessary to comply with WIC section 11403(b), which states, "A nonminor dependent receiving aid pursuant to this chapter... shall meet the legal authority for placement and care by being under a foster care placement order by the juvenile court, or the voluntary reentry agreement as set forth in subdivision (z) of Section 11400..." Accordingly, this section is adopted to reflect that requirement.

A basic requirement for foster care is that there is a valid authority for placement. For minors, these are court orders (including guardianship) or voluntary placement agreements. These documents a county authority to place the child and provide them services. Because a nonminor dependent is over 18, they must agree to continued foster care placement and services. In addition, there is no authority for placement until the youth goes back to court which can take some time. By signing a re-entry agreement, the nonminor dependent may receive benefits and services without having to wait for court jurisdiction to resume. County eligibility workers use the Department's regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

#### Modification:

**Following the public hearing, it was noted that the Specific Purpose and Factual Basis section were improperly referenced to Section 45-312.531(c). The specific purpose and factual basis in this section supports Section 45-312.531(b). Additionally, and for clarity, CDSS has further amended Section 45-312.531(c) by inserting "Mutual Agreement for" between "Sign a" and "EFC." The insertion of this phrase is necessary to clarify one type of agreement that identifies the authority for placement in order to receive foster care funding.**

#### ~~Section 45-312.531(d) and (d)(1)~~ Section 45-312.531(c) and (c)(1)

#### Specific Purpose:

This section is adopted to clarify that a nonminor in a juvenile court created guardianship must continue to live with the former legal guardian in order to be eligible for payment.

#### Factual Basis:

This section is necessary to comply with WIC section 11405(e)(2)(D), which requires the guardian to maintain responsibility for support of the nonminor in order to continue eligibility. If the youth lives in another foster care facility, then the guardian is not responsible for the support of the nonminor. If the youth is in a non-foster care facility, such as a dorm, then payment can continue to the guardian provided he/she is still supporting the nonminor. County eligibility workers use the

Department's regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

**Modification:**

**Following the public hearing, it was noted that the Specific Purpose and Factual Basis sections were improperly referenced to Section 45-312.531(d) and (d)(1). The specific purpose and factual basis in this section supports Section 45-312.531(c) and (c)(1).**

**Section 45-312.531(e) Section 45-312.531(d)**

**Specific Purpose:**

This section is adopted to clarify that the legal guardian will continue to receive the nonminors extended foster care payment unless the nonminor can satisfy the conditions of Section 45-301.214.

**Factual Basis:**

This section is necessary to comply with WIC section 11405(e)(2)(D), which requires the guardian to maintain responsibility for support of the nonminor in order to continue eligibility. Thus, the guardian will continue to receive the extended foster care payment on behalf of the nonminor. However, if the nonminor can satisfy the requirements of Section 45-301.214, he/she can become his own payee as he/she could prior to reaching age 18. County eligibility workers use the Department's regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

**Section 45-312.531(d)**

**Modification:**

**Following the public hearing, it was determined that the Specific Purpose and Factual Basis for Section 45-312.531(d) was mistakenly improperly referenced to Section 45-312.531(e) and was confused with the Specific Purpose and Factual Basis for Section 45-312.532 in the Initial Statement of Reasons. Therefore, CDSS provides the following statements of Specific Purpose and Factual Basis for Section 45-312.531(d).**

**Specific Purpose:**

**This section is adopted to clarify that, in order to be eligible for extended nonrelated legal guardianship benefits, a nonminor whose legal guardianship**

was established by the juvenile court must meet one of the participation requirements of Section 45-310.18.

**Factual Basis:**

This section is necessary to comply with WIC section 11405(e)(1), which requires the nonminor to meet the "conditions of eligibility, as described in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403."

Therefore, to continue to receive extended nonrelated legal guardianship benefits, the youth must participate in secondary education, postsecondary or vocational education, employment, a program or activity designed to promote or remove barriers to employment or be unable to participate in any of these activities. County eligibility workers use CDSS' regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

**Section 45-312.532**

**Modification:**

Following the public hearing, it was determined that the Specific Purpose and Factual Basis for Section 45-312.532 was mistakenly associated with Section 45-312.531(e) in the Initial Statement of Reasons. Therefore, CDSS provides the following statements of Specific purpose and Factual basis for Section 45-312.532.

**Specific Purpose:**

This section is adopted to clarify that the legal guardian will continue to receive the nonminors extended foster care payment unless the nonminor can satisfy the conditions of Section 45-301.214.

**Factual Basis:**

This section is necessary to comply with WIC section 11405(e), which requires the guardian to maintain responsibility for support of the nonminor to continue eligibility. Thus, the guardian will continue to receive the extended foster care payment on behalf of the nonminor. However, if the nonminor can satisfy the requirements of Section 45-301.214, he/she can become his own payee as he/she could prior to reaching age 18. County eligibility workers use CDSS' regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.



## **Sections 45-312.54, .541, and .542**

### **Modification:**

Following the public hearing, it was determined that Sections 45-312.54, .541, and .542 were mistakenly omitted from the Initial Statement of Reasons. Therefore, CDSS provides the following statements of Specific Purpose and Factual Basis for these sections.

### **Specific Purpose:**

These sections are adopted to clarify the conditions under which certain youth who formerly received federally funded benefits under the Kinship Guardianship Assistance Program (Kin-GAP) may receive benefits through AFDC-FC.

### **Factual Basis:**

This section is necessary to comply with WIC section 11405(e)(2), which permits a nonminor who attained 18 years of age while in receipt of federally funded Kin-GAP to receive AFDC-FC benefits up to age 21 when specific conditions apply. Consistent with the statute, the regulation requires the relationship between the nonminor and the Kin-GAP guardian to be one not created through blood, adoption, or affinity within the fifth degree of kinship, the nonminor must have been under 16 years of age at the time the Kin-GAP negotiated agreement payments commenced, the nonminor can no longer be eligible for benefits under the Kin-GAP program, and the nonminor must meet the same participation requirements, as described in WIC section 11403 and Section 45-310.18, just like all youth who receive an extended foster care benefit. Additionally, as required by statute, the guardian must continue to be responsible for the support of the nonminor.

These regulations are necessary for the consistent statewide application of these eligibility requirements. County eligibility workers use CDSS' regulations when determining whether the child or nonminor dependent is in a placement that is eligible for foster care funding. They may not turn to the statute to examine eligibility conditions, making the regulations often the primary resource for eligibility information. These sections will inform eligibility workers and ensure consistent funding in the AFDC-FC program.

b) Forms Incorporated by Reference

1. SOC 155B (3/00), Mutual Agreement For 18 Year Olds
2. SOC 161 (9/11), Six-Month Certification Of Extended Foster Care Participation
3. SOC 162 (7/18), Mutual Agreement for Extended Foster Care
4. SOC 163 (7/18), Voluntary Re-Entry Agreement For Extended Foster Care

It would be cumbersome, unduly expensive, and otherwise impractical to publish these forms in the CCR. The forms were omitted during the 45-Day Public Comment Period; therefore, they are available to the public for review during the 15-Day Renotice Period.

SOC 155B (3/00), Mutual Agreement For 18 Year Olds is adopted and incorporated by reference. The purpose of this form is to document the mutual agreement between the placing agency and a youth whose nonrelated legal guardianship was created by the probate court. For the youth to continue receive AFDC-FC benefits after age 18, and up to age 19, while the youth is completing his or her education. The form details the expectations of both the youth and the agency and is necessary to implement W&I Code section 11405. Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Extended Foster Care Program.

The SOC 161 (9/11), Six-Month Certification Of Extended Foster Care Participation is adopted and incorporated by reference. The purpose of this form is to provide a uniform way for the social worker or probation officer to certify a nonminor's participation in extended foster care activities. The form is transmitted it to the eligibility worker, who ensures that the youth continues to receive proper benefits based, in part, on the certification. This form is necessary to ensure that eligible youth continue to receive extended foster care funding and so that proper documentation of eligibility is maintained in the child welfare care. Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Extended Foster Care Program.

The SOC 162 (7/18), Mutual Agreement for Extended Foster Care is adopted and incorporated by reference. The purpose of this form is to formalize a youth's agreement to remain in foster care under the supervision of the child welfare or probation department, after the age of 18 and up to age 21. This form documents the responsibilities and expectations of both the youth and the agency, ensuring that youth will remain eligible for extended foster care. This form is necessary to ensure that there is documentation for the legal authority for placement and care, as required by WIC section 11403(b). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Extended Foster Care Program.

The SOC 163 (7/18), Voluntary Re-Entry Agreement For Extended Foster Care is adopted and incorporated by reference. The purpose of this form is to document the agreement between the placing agency and a youth who intends to reenter foster care after the age of 18 and up to age 21. This form documents the responsibilities and expectations of both the youth and the agency, ensuring that youth will remain eligible for extended foster care benefits. This form is necessary to ensure that there is documentation for the legal authority for placement and care, as required by WIC section 11403(b). Moreover, this form is necessary for consistency and uniformity in the statewide administration of the Extended Foster Care Program.

b) Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code (GC) because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

c) Statement of Alternatives Considered

CDSS determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

d) Statement of Significant Adverse Economic Impact On Business

CDSS determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulations only involve local government.

e) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on July 2, 2018, in Sacramento, California. No oral testimony was received during the public hearing but written was received from the following during the 45-day comment period (May 18, 2018 to 5:00 p.m. July 2, 2018).

## **Comments from the Alliance for Children's Rights and Bay Area Legal Aid**

### **1. Section 45-310.231(c)**

#### **Comment:**

"We recommend deleting 45-310.231(c), which states that extended foster care benefits may be suspended when a nonminor dependent "no longer meets any participation criteria." As written, the regulation allows a nonminor dependent's benefits to be suspended based on a unilateral decision by the youth's social worker or probation officer that the nonminor dependent does not meet a participation criterion. However, the Department of Social Services has made clear that the determination that a nonminor dependent no longer meets participation criteria must be made by the juvenile court. All County Letter 11-69 states, in relevant part:

'It is the responsibility of the case manager to engage the NMDs and assist them in maintaining eligibility. If efforts to resolve the eligibility issue by working with the NMD are unsuccessful, and the NMD remains unwilling to reside in an approved placement and either comply with the existing case plan, or modify the case plan to reflect new circumstances and goals, then the case manager shall request the court to set a W&IC 391 court hearing to begin the process to terminate court jurisdiction.'

ACL 11-69 (emphasis added).

Accordingly, once a nonminor dependent is purportedly noncompliant with the participation criteria, the social worker or probation officer is required to request a court hearing to determine whether jurisdiction must be terminated. If the court finds that the nonminor dependent is noncompliant, it will terminate court jurisdiction and the nonminor dependent will no longer be eligible for benefits. However, absent that judicial finding, the county cannot suspend benefits to an otherwise eligible nonminor dependent residing in an approved placement solely because the county alleges that the nonminor dependent no longer meets participation criteria. Nonparticipation is a basis for termination, but not suspension."

#### **Response:**

CDSS appreciates these comments but is not amending the regulation at this time. Although ACL 11-69 did require a judicial determination to discontinue extended foster care payments due to lack of participation, the statute, WIC section 11403(e), has subsequently been amended to clarify the conditions under which payment may be suspended by the agency. Therefore, the judicial step to terminate payment is no longer required and the statutory change permits the suspension of benefits under the circumstances that we've identified; requiring payment to be suspended is appropriate and reduces the risk of overpayments or disallowances.

## 2. Sections 45-310.23 and 45-310.24

### Comment:

"We recommend adding references to the Manual of Policies and Procedures regulations on State Hearing in Sections 45-310.23 and 45-310.24. Chapter 22-000 of the Manual of Policies and Procedures sets forth the due process requirements counties must adhere to when benefits are changed, including when benefits are suspended or terminated. Although these requirements apply to AFDC-FC beneficiaries, including nonminor dependents, in our experience, it is rare that nonminor dependents receive notices of action when their extended foster care benefits are suspended or terminated. As a result, these youths do not know the basis for the county's decision and have no opportunity to appeal. We recommend explicitly stating in Sections 45-310.23 and 45-310.24 that nonminor dependents are entitled to adequate notice and the opportunity to request a state hearing under Chapter 22-000."

### Response:

CDSS appreciates this comment but is not amending the regulation at this time. All benefit programs are subject to the regulations at Chapter 22-000, including extended foster care. However, CDSS has been in contact with the commenter to ascertain which counties have not been following the 22 regulations and have been in contact with that county providing training and technical assistance to ensure they know the requirements and are following them.

## **Comments from Children's Advocacy Institute (CAI)**

### 1. Section 45-101(t)(3)

### Comment:

"First, proposed regulatory section 45-101(t)(3) defines Transitional Housing Placement-Plus Foster Care as a placement that offers 'supervised housing opportunities' and supportive services to eligible nonminor dependents. It would be helpful to have a definition for the term 'supervised housing opportunities.' This would help to differentiate 'supervised housing opportunities' from an "independent supervised setting" (a term used in existing regulatory language)—if in fact there is any difference."

### Response:

CDSS appreciates this comment but is not amending the regulation at this time. Regulations will subsequently be developed related to the Transitional Housing Placement-Plus Foster Care placements and this comment will be addressed in those regulations.

## 2. Section 45-310.231

### Comment:

"Second, proposed regulatory section 45-310.231 articulates the instances in which extended foster care benefits 'shall' be suspended (emphasis added). The proposed regulation is intended to comply with WIC section 11403(e), which states 'Eligibility for aid under this section shall not terminate until the nonminor dependent attains the age criteria, as set forth in subdivision (a), but aid may be suspended when the nonminor dependent no longer resides in an eligible facility, as described in Section 11402, or is otherwise not eligible for AFDC-FC benefits under Section 11401...' (emphasis added). By using the word 'shall,' the proposed regulatory language removes the discretion contained within the statute it is supposed to be implementing. We would suggest the discretion expressly contained in the statute be reflected in the regulation."

### Response:

CDSS appreciates these comments but is not amending the regulation at this time. Although ACL 11-69 did require a judicial determination to discontinue extended foster care payments due to lack of participation, the statute, WIC section 11403(e), has subsequently been amended and this step is no longer required.

## 3. Section 45-312.523

### Comment:

"Finally, proposed regulatory provision 45-312.523 appears to be incomplete. The regulation reads 'The NRLG will receive the nonminor's EFC payment unless the nonminor payee.' We think some wording may have been inadvertently left out of this provision."

### Response:

CDSS appreciates this comment and agrees that regulation language is missing related to how the nonminor would receive his/her own payment.

The regulation is amended to read:

.523 The NRLG will receive the nonminor's EFC payment unless the nonminor payee can satisfy the conditions in section 45-301.214 and be his or her own payee.